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24 Attorneys for Plaintiff Kambiz Batmanghelich
25 and Class Counsel

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 KAMBIZ BATMANGHELICH, on
18 behalf of himself and all others
19 similarly situated, and on behalf of the
20 general public,

21 Plaintiffs,

22 v.

23 SIRIUS XM RADIO, INC., a
24 Delaware corporation, STREAM
25 INTERNATIONAL INC., a Delaware
corporation, and DOES 3 through 50,
inclusive,

26 Defendants.

27 **CASE NO.: CV 09-9190 VBF (JCx)**

28 **DECLARATION OF DANIEL F.
GAINES IN SUPPORT OF
PLAINTIFF'S RESPONSE TO
OBJECTIONS TO CLASS ACTION
SETTLEMENT**

DATE: September 12, 2011

TIME: 1:30 P.M.

COURTROOM: 9

JUDGE: Hon. Valerie Baker Fairbank

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of
3 California. I am a shareholder of Gaines & Gaines, APLC, co-counsel for Plaintiff
4 Kambiz Batmanghelich and Class Counsel in this action. I have personal knowledge
5 of the facts set forth herein and if called as a witness to testify to them, could and
6 would do so competently.

7 2. Attached hereto as Exhibit "A" is a true and correct copy of an objection
8 mailed to my office by Mr. Edmund Bandas.

9 I declare, under penalty of perjury, under the laws of the State of California and
10 the United States of America, that the foregoing is true and correct. Executed on this
11 22nd day of August, 2011 at Woodland Hills, California.

12
13 /s/ Daniel F. Gaines
14 DANIEL F. GAINES

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1 **PROOF OF SERVICE**

2 **UNITED STATES DISTRICT COURT OF CALIFORNIA**
3 **CENTRAL DISTRICT**

4 **CASE NAME: KAMBIZ BATMANGHELICH, on behalf of himself and all**
5 **others similarly situated, and on behalf of the general public vs. SIRIUS XM**
6 **RADIO, INC., a Delaware corporation, STREAM INTERNATIONAL INC., a**
7 **Delaware corporation, and DOES 3 through 50, inclusive, CASE NUMBER: CV**
8 **09-9190 VBF(JCx)**

9 I am employed in the County of Los Angeles, State of California. I am over
10 the age of 18 and not a party to the within action; my business address is: 21550
11 Oxnard Street, Suite 980, Woodland Hills, California 91367

12 On August 22, 2011, I served the foregoing document(s) described as:

13 **DECLARATION OF DANIEL F. GAINES IN SUPPORT OF PLAINTIFF'S**
14 **RESPONSE TO OBJECTIONS TO CLASS ACTION SETTLEMENT**

15 in this action by placing a true copy thereof in a sealed envelope addressed as
16 follows:

17 Darrell Palmer Edmund F. Bandas
18 Janine R. Menhennet 200 Lake Road, # 1008
19 Law Offices of Darrell Palmer Belton, Texas 76513
20 603 North Highway 101, Ste A *Objector in pro per*
21 Solana Beach, California 92075
22 *Attorneys for Objector Michelle Melton*

23 **BY NOTICE OF ELECTRONIC FILING.** The above-listed counsel have
24 consented to electronic service and have been automatically served by the
25 Notice of Electronic Filing, which is automatically generated by CM/ECF at
26 the time said document was filed, and which constitutes service pursuant to
27 FRCP 5(b)(2)(D).

28 **FEDERAL.** I declare under penalty of perjury under the laws of the United
29 States that the foregoing is true and correct, and that I am employed in the
30 office of a member of the bar of this Court at whose direction the service was
31 made.

32 Executed on August 22, 2011, at Woodland Hills, California.

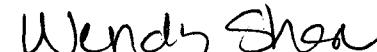
33 
34 Wendy A. Shore

Exhibit “A”

EDMUND F. BANDAS
200 Lake Road, #1008
Belton, Texas 76513

United States District Court
312 N. Spring St.
Attention: Room G-19, Civil Intake Section
Los Angeles, CA 90012

Re: Case No. CV-09-9190 VBF (JCx)
Kambiz Batmanghelich et. al. v. Sirius XM Radio Inc. AND Stream International,
Inc.; United States District Court for the Central District of California

Dear Court Clerk:

My name is Edmund F. Bandas. My current address is 200 Lake Road, #1008, Belton, Texas 76513.

I am a class member and I have already submitted my claim form. My Claim No. is 00001610 and my Control No. is 1337393349.

Objection is made to the proposed settlement as follows:

The class definition is impossibly vague, and will result in uncertainty as to who is within and without the settlement class. The problem is the language. "You are a Class Member and the Settlement could affect your legal rights if you were in California, Florida, Maryland, Nevada, or New Hampshire[.]" What does it mean to be "in" one of these Covered States? Physically located there? Possessing a phone with an area code there? Owning a phone with an area code there? A resident there?

Moreover, the class definition is fail-safe in that it defines the class in terms of an ultimate issue on the merits, namely that the caller was not informed the call was being recorded.

The settlement also unfairly discriminates against class members who are not "in California" by providing substantially less compensation to them under the settlement. It may well be that persons "in California" have stronger claims, but if that is the case, then procedural protections such as separate counsel and sub-classes should have been instituted to protect the class members not "in California." This has created a substantial conflict of interest for class counsel.

Aug. 4, 2011

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Attorneys' fees are excessive under a lodestar or percentage of recovery analysis, and class counsel is not entitled to fees due to the conflict of interest set forth above.

Sincerely,



Edmund F. Bandas

cc: **Via Federal Express**

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Kenneth S. Gaines, Esq.
Gaines & Gaines, APLC
21550 Oxnard Street, Ste. 980
Woodland Hills, California 91367
Class Counsel

Via Federal Express

Edward D. Totino, Esq.
DLA Piper LLP (US)
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Los Angeles, California 90067
Attorneys for Stream International, Inc.

Via Federal Express

Trenton H. Norris, Esq.
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One Embarcadero Center, 22nd Floor
San Francisco, California 94111
Attorneys for Sirius XM Radio, Inc.